

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs October 15, 2008

STATE OF TENNESSEE v. ANNETTE M. TAYLOR

**Direct Appeal from the Circuit Court for Blount County
No. C-16265, C-16266 & C-16267 Michael H. Meares, Judge**

No. E2008-00595-CCA-R3-CD - Filed December 9, 2008

The Defendant pled guilty in November 2006 to three counts of violating a habitual motor vehicle offender ("HMVO") order, a Class E felony. After a hearing, the trial court revoked the Defendant's community corrections sentence and ordered her to serve the remainder of her sentence in the Tennessee Department of Correction ("TDOC"). On appeal, the Defendant claims the trial court erred when it revoked her community corrections sentence and re-sentenced her. After a thorough review of the record and the applicable law, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH and JOHN EVERETT WILLIAMS, JJ., joined.

J. Liddell Kirk (on appeal), Knoxville, Tennessee, and Mack Garner (at trial), Maryville, Tennessee, for the Appellant, Annette M. Taylor.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Lacy Wilber, Assistant Attorney General; Michael L. Flynn, District Attorney General; Robert L. Headrick, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Background

After the Defendant pled guilty to several HMVO violations, the trial court ordered the Defendant to serve an effective four-year sentence and ordered her to serve thirty-three days in jail, with the remainder of her sentence to be served on supervised probation. The Defendant's probation officer filed a probation violation report. After a hearing, the trial court revoked the Defendant's probation and ordered her to serve seventy-four days in jail, with the remainder of her sentence on community corrections. Additionally, the trial court ordered the Defendant, upon her release from

jail, to complete a residential drug-treatment program. The Defendant's probation officer soon filed a community corrections violation report. In January 2008, the trial court issued a warrant alleging the Defendant violated the terms of her community corrections sentence when she was "kicked out of the Next Door treatment for non-compliance" and when she "left treatment [at the White Spirit Lodge] [without] permission between [12:00 a.m. and 3:00 a.m.]"

II. Community Corrections Revocation

The trial court held a community corrections revocation hearing, wherein the following evidence was presented: the Defendant's community corrections officer, Brian Hensley, said he first met with the Defendant on October 30, 2007, the day she completed her jail sentence. Officer Hensley recounted how, during this initial meeting, he explained to the Defendant the conditions of her community corrections sentence. He testified that the Defendant entered Next Door Program, a drug-treatment program in Nashville, Tennessee.

Officer Hensley testified that, a month after the Defendant entered the Next Door Program, the program discharged her, citing her "unwillingness to help herself, requiring large amount of staff time and [not being] committed to fulfill the guidelines that she signed upon entering." Hensley recounted how he then arranged for the Defendant to enter a similar program, White Spirit Lodge, in Knoxville, Tennessee.

According to Hensley, the Defendant met with similar results at White Spirit Lodge. Program staff informed Hensley that the Defendant violated program rules by using her cell phone, failing to verify employment, frequently displaying anger, being uncooperative about housekeeping, and displaying "complete resistance to her treatment." After the Defendant had been enrolled for a month, White Spirit Lodge staff informed Hensley that the Defendant left the White Spirit Lodge facility without permission. Accordingly, on January 15, 2008, Hensley filed a violation of community corrections report.

The Defendant testified that in November 2006 she violated the terms of her probation and received a new sentence of jail time followed by community corrections. With regard to her stay at the Next Door Program, the Defendant explained that she applied to over thirty different employers but that her heart condition and epilepsy prevented her from being offered employment. The Defendant said that it was difficult to obtain medical treatment while in the Next Door Program because she lacked health insurance and that this struggle caused a mental breakdown. She said that, after her breakdown, the program's head counselor suggested she leave Next Door because she needed more structure and support and less transitional emphasis. The Defendant testified that, after the program released her, the head counselor specifically told her there were "no complaints" about her conduct.

The Defendant testified that she was employed for the majority of her stay at the White Spirit Lodge and that she complied with its rules. She recalled that, when she asked whether she would be allowed to leave the program, she "was threatened with jail" by the program staff. The Defendant

also noted several instances in which she perceived that the staff treated her unfairly, recounting how the staff restricted the hours during which she could wash her clothes, refused to allow her step-father to transport her to work, and failed to intervene when her roommate consumed alcohol in their shared room. She testified that, in contrast, the staff allowed her fellow habitants to wash clothes at-will and rely on family for transportation. Additionally, the Defendant noted that she was constantly fatigued because each day she walked to and from work as well as counseling sessions.

The Defendant explained that she left that program without permission because of the staff's discriminatory application of rules: "I just didn't feel that it was fair to me. . . . I felt like it was just closed down on me, like I was just put out of the recovery picture." She went to a friend's house in Maryville, Tennessee, where the police later apprehended her pursuant to a community corrections revocation warrant. The Defendant testified that she incurred no new charges since the November 2006 revocation of her probation. She asked the trial court for a community corrections sentence to let her again attempt rehabilitation. She said she could live with her step-father and rely on him for financial support and transportation.

On cross-examination, the Defendant acknowledged that the trial court revoked her probation in November 2006 because she failed a drug test and did not report to her probation officer. The Defendant admitted that, after she abandoned the White Spirit Lodge, she used cocaine while staying with her friend in Maryville.

The trial court found the Defendant had violated her community corrections sentence, and it ordered her to serve the remainder of her sentence in confinement. It is from this judgment that the Defendant now appeals.

III. Analysis

On appeal, the Defendant argues that the trial court erroneously revoked her community corrections sentence and erroneously denied alternative sentencing when it ordered her to serve the remainder of her sentence in confinement. The Defendant contends, specifically, that the trial court erred when it revoked her community corrections sentence because her community corrections violation was not willful. The State responds that the Defendant's violation was willful but that a community corrections violation need not be willful in order to serve as a basis for a revocation.

A trial court may revoke a defendant's community corrections sentence based on the defendant's conduct and the defendant's non-compliance with the conditions of the community-based programs. T.C.A. § 40-36-106(e)(3)-(4) (2006). Such a decision is within the trial court's discretion, and this court will not disturb a trial court's revocation judgment unless there is "no substantial evidence" that a "violation of the conditions of [the community corrections program] has occurred. *State v. Harkins*, 811 S.W.2d 79, 82-83 (Tenn. 1991) (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978) and *State v. Delp*, 614, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)) (adopting the probation violations standard for a community corrections program violation due to the sentences' similar nature). In other words, the trial court must find proof of a community

corrections violation by a preponderance of the evidence. T.C.A. § 40-35-311(e) (2006); *State v. Joe Allen Brown*, No. W2007-00693-CCA-R3-CD, 2007 WL 4462990, at *4 (Tenn. Crim. App., at Jackson, Dec. 20, 2007), *no Tenn. R. App. P. 11 application filed*. We note that “only one basis for revocation is necessary,” and a defendant’s admission that he violated the conditions of his release to the community corrections programs is sufficient evidence for such a revocation. *Brown*, 2007 WL 4462990, at *4 (quoting *State v. Alonzo Chatman*, No. E2000-03123-CCA-R3-CD, 2001 WL 1173895, at *2 (Tenn. Crim. App., at Knoxville, Oct. 5, 2001), *no Tenn. R. App. P. 11 application filed*) (citing *State v. Johnson*, 15 S.W.3d 515, 518 (Tenn. Crim. App. 1999)).

Where the only violation alleged against a defendant is his or her failure to pay fines or fees, the trial court must find that the violation was willful in order to revoke community corrections. *State v. Bernita Hogan*, No. M2002-00808-CCA-R3-CD, 2003 WL 1787312, at *3 (Tenn. Crim. App., at Nashville, Apr. 4, 2003) (“When the defendant’s violation of probation is based on failure to pay restitution or fines, the trial court must determine the reasons behind the failure to pay. . . . If the court finds the nonpayment results from either the defendant’s willful refusal to pay or failure to make bona fide efforts to obtain the means to pay, the defendant’s probation may be revoked.”), *perm. app. denied* (Tenn. Sept. 8, 2003); *see Harkins*, 811 S.W.2d at 82-83 (holding that probation revocation standards apply also to revocations of community corrections). However, we emphasize that a finding of willfulness is necessary only for violations that involve non-payment. *Hogan*, 2003 WL 1787312, at *3. If a ground other than non-payment exists upon which to base the revocation, a trial court need not find any violation to be willful. *State v. Joshua P. Lomax*, No. M2005-02854-CCA-R3-CD, 2007 WL 49551, at *2 (Tenn. Crim. App., at Nashville, Jan. 5, 2007) (“[T]he Defendant pled guilty to violating his sentence based on a warrant that alleged not only that he had failed to pay court costs, but also that he had tested positive for drugs, failed to complete his required community service work, and failed to maintain regular employment. . . . The trial court was not required to further inquire into the defendant’s ability to pay court costs.”), *no Tenn. R. App. P. 11 application filed*.

If the trial court revokes the defendant’s community corrections sentence, then it may “resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed, less any time actually served in the community-based alternative to incarceration.” T.C.A. § 40-36-106(e)(4). Our Supreme Court has said that “the sentencing of a defendant to a community based alternative to incarceration is not final, but is designed to provide a flexible alternative that can be of benefit both to the defendant and to society.” *State v. Griffith*, 787 S.W.2d 340, 342 (Tenn. 1990). Moreover, a “defendant sentenced under the [Community Corrections Act] has no legitimate expectation of finality in the severity of the sentence, but is placed on notice by the Act itself that upon revocation of the sentence due to the conduct of the defendant, a greater sentence may be imposed.” *Id.*

If a trial court revokes a defendant’s release into the community corrections program, it must then decide whether to re-sentence the defendant. When deciding whether to sentence a defendant to confinement, a trial court should consider whether:

- (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
- (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

T.C.A. § 40-35-103 (2006).

In this case, the evidence presented at the Defendant's community corrections revocation hearing, considered in the light most favorable to the State, proves that the Defendant entered but did not complete the Next Door Program. The Defendant then abandoned the White Spirit Lodge during the middle of the night, failing to complete a second drug-treatment program. Also, the Defendant used cocaine after her departure but before her arrest.

At the conclusion of hearing, the trial court denied alternative sentencing. After the trial court noted the Defendant admitted she used cocaine once during her original probation period and once during her community corrections period, it explained:

Based on the proof the Court has heard, the Court finds that the Defendant has materially violated her Community Corrections by her failure to successfully complete the Next Door Program and then subsequently the program offered by White Spirit Lodge; that those failure to comply with the orders of the Court justify the revocation of her release status. And she will be in custody to serve the balance of her sentence, which is the original four-year sentence.

We conclude that the trial court did not abuse its discretion when it revoked the Defendant's community corrections sentence based upon a finding that the Defendant failed to complete both drug treatment programs. As discussed above, a finding of "willfulness" need not accompany a community corrections revocation where the underlying violation does not involve non-payment. *Hogan*, 2003 WL 1787312, at *3. In this case, the Defendant was alleged to have violated conditions of her release that did not involve non-payment. Therefore, contrary to the Defendant's argument, a finding of willfulness was not necessary in order to revoke her community corrections. *See Lomax*, 2007 WL 49551, at *2. We conclude the evidence does not preponderate against the trial court's finding that the Defendant violated her community corrections sentence.

Furthermore, we find no error in the trial court's denial of alternative sentencing. The Defendant violated the probation she originally received for her HMVO violations. Therefore, the community corrections violation at issue is the Defendant's second failure to complete an alternative sentence. The trial court referenced this repeated failure, along with the Defendant's drug-use during previous alternative sentences and her failure to complete the two drug-treatment programs, when it denied alternative sentencing. Thus, the trial court considered whether "measures less restrictive

than confinement [had] frequently or recently been applied unsuccessfully to the [D]efendant.” T.C.A. § 40-35-103(c). We conclude that the trial court properly denied alternative sentencing and properly ordered the Defendant to serve the remainder of her sentence in the TDOC. The Defendant is not entitled to relief on this issue.

IV. Conclusion

After a thorough review of the record and the applicable law, we conclude the trial court properly revoked the Defendant’s community correction sentence and properly re-sentenced her to serve the remainder of her sentence in the TDOC. As such, we affirm the trial court’s judgment.

ROBERT W. WEDEMEYER